

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

ROBERT CASWELL and LISA
CASWELL, husband and wife,

Plaintiffs,

v.

OLYMPIC PIPELINE COMPANY, et al.,

Defendants.

CASE NO. C10-5232BHS

ORDER PARTIALLY
VACATING JUDGMENT,
GRANTING MOTION TO
REINSTATE MOTION FOR
RECONSIDERATION,
GRANTING MOTION FOR
RECONSIDERATION, AND
DENYING MOTION TO
CERTIFY

This matter comes before the Court on Plaintiffs' ("Caswells") motion to reinstate their motion for reconsideration (Dkt. 56), and their motion for reconsideration (Dkt. 41) of the Court's order of summary judgment as to all parties (Dkt. 39). Also before the Court is Caswells' motion to certify (Dkt. 42). The Court has considered the pleadings filed in support of and in opposition to the motions, the responses to the Court's order to show cause (Dkts. 52, 53) and the remainder of the file and hereby reinstates the motions to reconsider and to certify, grants Caswells' motion for reconsideration, partially vacates the summary judgment order, and denies as moot the motion to certify for the reasons discussed herein.

I. FACTUAL BACKGROUND & PROCEDURAL HISTORY

On July 22, 2010, the Court granted summary judgment in favor of all Defendants. *See* Dkt. 39. On August 5, 2010, the Caswells moved for reconsideration on the basis that

1 the Court erred in dismissing their claims against the nonmoving party, Atlantic Richfield
2 Company (“ARCO”). *See* Dkt. 41. They assert that ARCO did not join or move the Court
3 for summary judgment with the moving Defendants and, therefore, the Court erred in
4 granting summary judgment in their favor. *See id.* Additionally, on August 6, 2010,
5 Caswells moved for an order to certify the Court’s summary judgment ruling for
6 interlocutory appeal under 28 U.S.C. § 1292.

7 Before the Court ruled on these motions, the Caswells appealed. *See* Dkt. 44. On
8 September 24, 2010, the Ninth Circuit issued an order informing the Caswells that their
9 appeal would be held in abeyance until this Court ruled on the pending motions. Dkt. 55.
10 Following the Ninth Circuit’s order, the Caswells moved the Court to reinstate their
11 motions for reconsideration and to certify. Dkt. 56.

12 II. DISCUSSION

13 A. Caswells’ Motion for Reconsideration (Dkt. 41)

14 The Ninth Circuit has held that the overwhelming authority permits a district court
15 to *sua sponte* grant summary judgment in favor of a nonmoving party. *See, e.g., Cool*
16 *Fuel, Inc. v. Connett*, 685 F.2d 309 (9th Cir. 1982). However, this rule is limited to
17 certain circumstances where, among other things, the Court provides the losing party
18 notice that it planned to *sua sponte* issue summary judgment in favor of the nonmoving
19 party. *Lattin v. McCormick*, 46 F.3d 1142 (9th Cir. 1995).

20 In the instant matter, the Court did not give the Caswells adequate notice before
21 granting summary judgment in favor of ARCO, a nonmoving party. Therefore, on this
22 basis, the Court grants the Caswells’ motion to the extent it relates to ARCO.

23 Therefore, the Court vacates the prior order of summary judgment (Dkt. 39) only
24 as to ARCO. ARCO and the Caswells shall submit a joint status report (“JSR”). The
25 Court will set a timeline to file the JSR.
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B. Caswells' Motion to Certify (Dkt. 42)

The Caswells move the Court to certify the Court's prior order on summary judgment as to the moving defendants (not to include ARCO) for interlocutory appeal under 28 U.S.C. § 1292. *See* Dkt. 56.

Section 1292 permits a district court to certify an order for interlocutory appeal when the order is "not otherwise appealable." 28 U.S.C. § 1292(b). The Court has already issued final judgment in this matter (Dkt. 40) and vacates herein only that portion of the prior summary judgment order (Dkt. 39) that pertains to ARCO.


Because the Court's final judgment as to the moving defendants is not being vacated, that judgment is "otherwise appealable." Therefore, the Caswells' motion to certify is denied as moot.

III. ORDER

Therefore, it is hereby **ORDERED** that

- (1) The Caswells' motion for reconsideration (Dkt. 41) is **GRANTED** as discussed herein;
- (2) The Caswells' motion to certify (Dkt. 42) is **DENIED** as moot;
- (3) The Court **VACATES in part** its prior order on summary judgment (Dkt. 39) as discussed herein; and
- (4) The Court will set a new trial schedule in this matter and request a JSR from the parties.

DATED this 24th day of November, 2010.


 BENJAMIN H. SETTLE
 United States District Judge